

Amend Section 6459 of the Sales and Use Tax Law to allow for the tax payment extensions due to a delayed budget to be effective until the last day of the month following the month in which the budget is adopted.

Source: Sales and Use Tax Department

Current law requires taxpayers to file sales and use tax returns on or before the last day of the month following the end of the reporting period. Failure to file the return timely and pay the taxes due would result in the imposition of penalties and interest.

Due to the delay in approving the state budget in 1992, the Board sponsored Assembly Bill 101 (Stats. 1993, Ch. 324) which amended Section 6459 of the Revenue and Taxation Code to allow the Board to extend the time period in which a taxpayer must file a sales and use tax return when the taxpayer is an unpaid creditor of the state and a state budget has not been adopted in a timely manner. As amended, Section 6459 provides that the return is due at the end of the same month in which the budget is adopted or one month from the due date of the return or payment, whichever comes later. Prior to passage of this bill, many taxpayers were unfairly burdened by the fact that they owed the state an amount of tax, while at the same time they were owed money by the state that they were unable to collect due to delays in enacting the state budget.

However, current law may not grant the taxpayer the necessary relief that the statute was intended to provide. The following scenarios illustrate the reason for the suggested change.

Scenario #1: Budget adopted August 30th

| Period | Due Date | Last Day for Extension | Days from Budget to Extension Deadline |
|-----------------|-----------|------------------------|--|
| July Prepayment | August 24 | September 24 | 24 |
| July Return | August 31 | September 30 | 30 |

Scenario #2: Budget adopted September 25th

| Period | Due Date | Last Day for Extension | Days from Budget to Extension Deadline |
|-----------------|-----------|------------------------|--|
| July Prepayment | August 24 | September 30 | 5 |
| July Return | August 31 | September 30 | 5 |

In Scenario #1, it is likely that the state will have paid its debts by the time the extension expires and the taxpayer is required to remit taxes due to the state, thus not imposing any financial hardship on the taxpayer. In Scenario #2, it is highly unlikely that the state will pay its debts to the taxpayer before the extension expires. This situation essentially defeats the purpose of the extension which is to allow the taxpayer to postpone payment of their tax liability until they are paid for overdue debts of the state.

This proposal would provide that the return is due at the end of the *following* month in which the budget is adopted or one month from the due date of the return or payment, whichever comes later. This would address the situation illustrated in Scenario #2. Under the provisions of this proposal, the taxpayer in Scenario #2 should receive payment from the state prior to the due date of their tax liability since the extension would be good until October 31, rather than September 30.

Section 6459 of the Revenue and Taxation Code is amended to read:

6459. (a) The board for good cause may extend for not to exceed one month the time for making any return or paying any amount required to be paid under this part. The extension may be granted at any time provided a request therefor is filed with the board within or prior to the period for which the extension may be granted.

Any person to whom an extension is granted shall pay, in addition to the tax, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax would have been due without the extension until the date of payment.

(b) The board may grant an extension for more than one month if both of the following conditions occur:

- (1) A budget for the state has not been adopted by July 1.
- (2) The person requesting the extension is a creditor of the state who has not been paid because of the state's failure to timely adopt a budget.

Any extension granted under this subdivision shall expire no later than the last day of the month following the month in which the budget is adopted or one month from the due date of the return or payment, whichever comes later.

Any person to whom an extension has been granted, under this subdivision shall pay, in addition to the tax, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax would have been due without the extension until the date of payment. However, no interest shall be due on that portion of the payment equivalent to the amount due to the person from the state on the due date of the payment.